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[Resources By Topic](#)

[Resources By Audience](#)

[Resources By Type](#)

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Access to San Francisco Small Businesses A Problem for Customers with Disabilities

The following report, Access to San Francisco Small Businesses a Problem for Customers with Disabilities or Risk Management Approach to Small Business Failing, is the result of a research project conducted by the San Francisco Collaborative with grant funding from PERI.

In 2002 and 2003 hundreds of lawsuits were filed against San Francisco small businesses. These lawsuits were for violations of long-standing state and federal laws requiring accessibility to customers with disabilities. Doorways were not wide enough for persons using wheelchairs. Doors were impossible to open by individuals with mobility impairments. Sales space was difficult to navigate.

Reports from the small business community indicated that lawsuits were being settled for \$10,000 to \$20,000 each. In addition, modifications for accessibility were usually, but not always, made. Advocates in the disability rights community joined small business people to find a collaborative solution.

A proactive, risk management approach was taken in San Francisco: act preemptively to avoid litigation by increasing accessibility to customers with disabilities. Information about legal requirements for accessibility was offered to small businesses. Outreach was extensive and varied in approach. Money was made available to small businesses to pay for accessibility surveys, proactively, and for modification planning.

Eighteen months after a collaborative effort began in San Francisco less than 3% of those offered information responded. Less than 2/10% requested funds for accessibility surveys or modification planning.

Litigation has achieved greater compliance with state and federal law, greater accessibility than a non-litigious collaborative approach.

How did this happen? Where do we go next?

The Situation

If state and federal laws requiring accessibility have been around for well over a decade, how did we arrive at the current state of affairs?

To begin, we must recognize that access to businesses is a **civil right** for people with disabilities. Next, we must understand that these laws are not capricious but well thought out.

State building code (Title 24) requires accessibility in new construction and modifications of existing property only when a certain level of alteration or remodeling occurs. Permits must be obtained from the Department of Building Inspection (DBI). Architectural plans must be checked and approved. Completed work must pass an inspection. How is it possible to sue under these circumstances? While not exhaustive, we have found a number of causes: In some cases it was apparent that work had been done in the last 20 years and did not include the access requirements in force at the time. A permit history at DBI would confirm this. At the same time in the past DBI had failed. In some instances permits expired; DBI did not follow up; work completed was never inspected. In some cases work was done without a permit. In some more recent situations inspectors did not appear to do a thorough job. To what extent is this a matter of lack of sufficient resources at DBI? of failure to do the job? And to what level of significance in the over all picture? Much as we would welcome simple explanations, we cannot say.

The Americans with Disabilities Act (ADA) has been in effect since 1990. The Department of Justice published guidelines for small businesses. Internal Revenue provided tax credits for small businesses removing barriers to accessibility. Still, many business people claimed ignorance of the ADA. Ironically, in an effort to avoid burdening small businesses the "readily achievable" standard for barrier removal was created. It applies when there is no new construction or alteration. It requires removal of barriers to accessibility

when that is inexpensive and easy to do, when taking account of the resources of a particular business. **However, this is an ongoing obligation.** In 1990 or 1995 it may not have been "readily achievable" to install an automatic door opener or lower sales counter height, but it may well have become so over time.

* When barriers to accessibility were obvious and significant, often at the front door, lawsuits were filed alleging that removal was "readily achievable" and long overdue. In the absence of evidence of removal of barriers on a gradual basis or a plan to do so, small businesses found themselves vulnerable to litigation. >

A San Francisco Response

* In January, 2003 The San Francisco Collaborative was formed. It is a partnership of the disability rights and small business communities. Partners are the Independent Living Resource Center San Francisco (ILRCSF), the San Francisco Small Business Network, and the San Francisco Small Business Commission. Funding came from the Public Entity Risk Institute, matched by ILRCSF and the Small Business Commission.

They agreed that accessibility is a civil rights issue and that small businesses must comply with the law. They agreed that litigation, except against those small businesses which refused to make necessary modifications, did not serve the community well: litigation could damage a vital part of our local economy, and increased accessibility was not the apparent goal nor the obvious result of much of the litigation. The Collaborative also agreed that, ultimately, it is more important to emphasize the shared interests of a business with a product or service to offer and a customer with a disability who wants to buy the product or service.

The Collaborative partners agreed to proceed with certain assumptions:

There were errors and omissions in the permit and inspection process for Title 24 through the Department of Building Inspection;

The average small business person did not understand the requirements under ADA's "readily achievable" standard;

Most small businesses would make the needed changes, if they were informed about what was required;

informed about what was required,

A risk management approach would be well received (assess the situation and proactively ameliorate the risks of litigation, while gaining new customers);

A collaborative effort would be effective in increasing accessibility and reducing litigation;

Financial assistance to small businesses to obtain independent confidential accessibility surveys to assess the need for modifications would make it easy to be proactive.

The San Francisco Collaborative Plan

A number of services to the small business community were offered:

- A telephone and e-mail information and referral line

- Creation of easy to understand print materials about what accessibility means

- Outreach and information through media, presentations to small business groups, classes on accessibility

- A \$25,000 technical assistance fund, accompanied by a list of qualified, experienced accessibility surveyors from which to choose

- A voluntary dispute resolution process utilizing a panel of persons with disabilities and small business owners

An Advisory Committee of small business representatives and persons with disabilities met regularly over the first eighteen months of this project to engage in continual re-evaluation of effectiveness and with a readiness to try new approaches.

It was agreed that the critical success factors would be a significant number of businesses engaging in proactive accessibility surveys and a significant number increasing their accessibility

In 18 months we expected extensive outreach and, at least, indicators of success.

Methodology

1. Printed Materials: (in English, Chinese and Spanish)

- An introductory packet included information about the Collaborative's goals and services, a rolodex card, technical assistance fund guidelines, a technical assistance application, (initially) a survey of needs (abandoned after poor response), a coupon worth varying amounts of technical assistance (\$500 - \$1000)

- Tips for serving customers with disabilities

- A booklet describing "readily achievable barrier removal" in concrete, lay terms (created in response to obvious need in discussions with small business people)

- A "hot topics" list of questions and answers about the risks of litigation and a simpler path to accessibility

2. Presentations:

At the Small Business Network Awards Dinner, the Small Business Commission, a class at the Department of Building Inspection, and presentations to merchants in the West Portal, Upper Market, Union Street, Marina, and other neighborhoods.

3. Personal contacts:

By representatives of the Small Business Network and neighborhood associations.

4. Display at Department of Building Inspection:

Offering technical assistance funds.

5. Class:

In addition to presentations, an architect and an accessibility consultant would conduct a formal class on accessibility and practical solutions.

6. Information and Referral Service:

Requests would be fielded by phone, mail and e-mail.

7. Walking Tours:

Of small businesses to provide information about the services available and tips about actual and potential accessibility issues.

8. Media:

Articles in local newspapers: paid advertisements. Radio shows about the issues.

9. Dispute Resolution:

Creation of a voluntary dispute resolution process for small businesses and customers with disabilities.

10. A technical assistance fund:

The Collaborative offered cost sharing for an accessibility needs survey or architectural plans to make accessibility changes up to \$500; increased this to \$1000; currently offered as potentially the full cost (an average of \$1000 - \$1500). The fund is simple to apply to. Approval usually comes within 24 hours. Payments are made directly to the surveyor or planner on completion of the work. Other payment possibilities include for classes in accessibility requirements and solutions.

Results

Over 2200 **print materials** and packets of information were distributed: through mailings to neighborhood merchants associations and to individual businesses randomly selected from lists provided by the Council of District Merchants and the Small Business Network; at a large small business luncheon, on walking tours and at presentations.

Over 500 merchants were reached at **presentations**.

A **class** was conducted for 10 merchants in the Marina neighborhood, the only neighborhood association to respond to offer of a free class.

More than 50 small business people used the **information and referral service**.

Walking tours (with architect to offer accessibility pointers) occurred in the Union Street and Upper Market areas, with Supervisor Fiona Ma in the Sunset and with Supervisor Jake McGoldrick in the Richmond District, reaching more than 40 merchants. Future plans include collaboration with the Mayor's Office of Neighborhood Services.

Media

Articles on the Collaborative and the issues it addresses appeared in the San Francisco Business Times, the Independent, Marina Times, Sunset Beacon, Richmond Review, Sing Tao and two merchants association newsletters; interviews were aired on KNBR and KGO, and Supervisor Fiona Ma held a press conference for Chinese language media. Paid ads will appear in neighborhood newspapers in September, 2004 to encourage small businesses to find out about accessibility requirements.

Dispute Resolution

A pilot training and curriculum was created in June by Community Boards including potential panelists – mediators from the disability and small business communities.

Successes

To date (July 31, 2004) three applicants to the technical assistance fund have received \$1775 for accessibility surveys and have made significant changes to increase accessibility; one request is pending.

Conclusions

Advisory committee members, disability rights advocates and knowledgeable accessibility specialists have discussed the meager results to date and have come to the following conclusions:

Small businesses appear unwilling to act in the absence of a "hammer" such as litigation or fines. The Department of Building Inspection has a "Notice of Violation" process which can lead to referral to the city attorney for fines and penalties. Very few go to that point before making necessary modifications. On the other hand, to enforce the ADA "readily achievable" standard a complaint must be made to the Department of Justice with a rare response in the case of small businesses. To disability rights advocates and individuals with disabilities litigation becomes a necessary tool to guarantee civil rights.

Small businesses appear to reject conceptually sound risk management principle for the more reactive "wait until I am sued" approach. Many small businesses were unwilling to entertain the thought of spending any money or even receive free advice on modifications, unless forced to.

That said there, also, is genuine confusion about obligations under Title 24 and ADA. There is real difficulty in accessing funds to make significant changes under the on-going obligations of ADA or to redress past errors under Title 24. And, we experienced very little overt negative feeling about people with disabilities. Many businesses pointed to regular customers with disabilities who were happy with the products or services offered.

Where to now?

We remain concerned that collaboration serves the entire community better than litigation. However, the facts support litigation as the more effective barrier removal tool. At this point we are exploring the following courses of action. We expect to make firm decisions by the end of the year:

Advocacy with other disability rights groups and the office of the State Attorney General to ensure accountability for local building inspection departments. This advocacy must include efforts to ensure effective staffing levels and adequate tracking systems. It also must include DBI follow up on

expired permits.

A non-profit accessibility enforcement campaign: an initial visit by a team of people with disabilities evaluating entrance to the business, use of and mobility in the business space itself, public restroom facilities; a notice of possible accessibility violations with a request for response and a plan of remediation within 30 days; litigation only in the absence of response and remediation plans; settlement as low as \$1000 depending on timelines of subsequent remediation plan.

A state tax credit for small business accessibility surveys, accompanied by an enforcement campaign with **initial** fines where there are violations of Title 24 and no accompanying recent survey and remediation plan.

Regular inclusion of information about accessibility obligations in tax bills to small businesses, with business insurance bills.

An information – outreach campaign led by the Mayor and members of the Board of Supervisors.

A media advertising campaign to promote compliance with accessibility obligations.

A privately endowed fund to be used together with tax credits and low interest loans for small businesses to make accessibility modifications. Not for use, if litigation is pending.

Adoption of ADA "readily achievable" standard as a local standard with local enforcement and substantial fines for an initial finding of non compliance.

The Collaborative will be presenting this report to the community and seeking feedback to add to or modify possible courses of action. One voice we have heard, already, is from advocates and individuals with disabilities who have been watching our efforts. They seem to be gaining a renewed commitment to civil litigation. If this is to be avoided, we must achieve a more effective response from small businesses and more effective enforcement by public agencies.

[\[Back\]](#)
